

1                   **QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
2                   Stephen A. Swedlow (*pro hac vice*)  
3                   stephenswedlow@quinnemanuel.com  
4                   191 N. Wacker Drive, Suite 2700  
5                   Chicago, IL 60606  
6                   Telephone: 312-705-7400

7                   **HAGENS BERMAN SOBOL SHAPIRO LLP**  
8                   Shana E. Scarlett (CA 217895)  
9                   shanas@hbsslaw.com  
10                  715 Hearst Avenue, Suite 202  
11                  Berkeley, CA 94710  
12                  Telephone: 510-725-3000

13                  *Interim Co-Lead Consumer Class Counsel*

14                  **BATHAEE DUNNE LLP**  
15                  Yavar Bathaee (CA 282388)  
16                  yavar@bathaedunne.com  
17                  445 Park Avenue, 9th Floor  
18                  New York, NY 10022  
19                  Telephone: 332-322-8835

20                  **SCOTT + SCOTT ATTORNEYS AT LAW LLP**  
21                  Kristen M. Anderson (CA 246108)  
22                  kanderson@scott-scott.com  
23                  230 Park Avenue, 17th Floor  
24                  New York, NY 10169  
25                  Telephone: 212-223-6444

26                  *Interim Co-Lead Advertiser Class Counsel*

27                  **WILMER CUTLER PICKERING HALE  
28                  AND DORR LLP**

1                  Sonal N. Mehta (CA 222086)  
2                  Sonal.Mehta@wilmerhale.com  
3                  2600 El Camino Real, Suite 400  
4                  Palo Alto, CA 94306  
5                  Telephone: 650-858-6000  
6                  Facsimile: 650-858-6100

7                  David Z. Gringer (*pro hac vice*)  
8                  David.Gringer@wilmerhale.com  
9                  Ari Holtzblatt (*pro hac vice*)  
10                 Ari.Holtzblatt@wilmerhale.com  
11                 1875 Pennsylvania Ave NW  
12                 Washington, DC 20006  
13                 Telephone: 202-663-6000  
14                 Facsimile: 202-663-6363

15                  *Attorneys for Defendant Facebook, Inc.*

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17                  **UNITED STATES DISTRICT COURT**  
18                  **NORTHERN DISTRICT OF CALIFORNIA**  
19                  **SAN JOSE DIVISION**

20                  MAXIMILIAN KLEIN, et al., on behalf of  
21                  themselves and all others similarly situated,

22                  Plaintiffs,

23                  v.

24                  FACEBOOK, INC., a Delaware Corporation  
25                  headquartered in California,

26                  Defendant.

27                  Case No. 5:20-cv-08570-LHK

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1                  **[PROPOSED] STIPULATED  
2                  DEPOSITION PROTOCOL**

3                  Judge: Hon. Virginia K. DeMarchi

4                  Re: Dkt. No. 173-1

1 The Parties hereby stipulate and agree to the following deposition protocol:

2 **1. NUMBER OF DEPOSITIONS**

3 a) Plaintiffs collectively may depose current Facebook employees in this case for a  
4 total of 200 hours of testimony (unless otherwise agreed to by counsel or by court order). Any  
5 deposition noticed pursuant to Fed. R. Civ. P. 30(b)(1) shall count for a minimum of three hours  
6 towards the total, even if the deposition runs for less than three hours. Depositions noticed  
7 pursuant to Fed. R. Civ. P. 30(b)(6) shall count against the total, and the total number of hours of  
8 30(b)(6) testimony of Facebook shall not exceed 21 hours (unless otherwise agreed to by counsel  
9 or by court order). Each Rule 30(b)(1) deposition of a current Facebook employee shall be limited  
10 to seven hours (unless otherwise agreed to by counsel or court order). To the extent that a current  
11 Facebook employee who has testified or will testify as a Rule 30(b)(1) deponent will provide  
12 corporate testimony on behalf of Facebook pursuant to Rule 30(b)(6), that witness's Rule 30(b)(6)  
13 testimony shall be limited (unless otherwise agreed to by counsel or court order) to 7 hours (in  
14 addition to the 7-hour limit on Rule 30(b)(1) testimony). No witness may be deposed more than  
15 once, except by agreement of counsel or court order. Facebook may depose each named Plaintiff  
16 or class representative. The parties shall meet and confer about limitations on additional categories  
17 of depositions as the case progresses, including non-party depositions (including former Facebook  
18 employees), and expert depositions. The parties shall also meet and confer to endeavor to agree  
19 to a stipulation as to the authenticity of documents produced in this case to obviate the need for  
20 additional depositions.

21 b) The parties shall meet and confer about 30(b)(6) topics and designees.

22 c) The limitations herein on depositions are presumptive only. The purpose of these  
23 presumptive limits is to encourage the judicious use of depositions, not to arbitrarily restrict access  
24 to evidence. The number of depositions may be expanded by stipulation, or for good cause upon  
25 motion to the Court. This order does not limit any Party's right to object to or seek a protective  
26 order with respect to any deposition noticed in this case. In addition, the presumptive number of  
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1 depositions is without prejudice to any Party seeking to expand or further limit the number of  
 2 depositions.

3           d) To the extent that any Party contends that the time provided for deposition in Rule  
 4 30(d)(1), namely that an individual fact deposition is limited to 1 day of 7 hours, is insufficient to  
 5 adequately complete a particular deposition, counsel for the Party and counsel for the witness shall,  
 6 prior to any relief being sought from the Court, meet and confer to attempt to reach agreement on  
 7 the length of the deposition.

8 **2. REMOTE DEPOSITIONS**

9           a) **Applicability:** As part of the consultation concerning deposition scheduling  
 10 required under N.D. Cal. Local Rule 30-1, the Parties shall discuss whether any deposition shall  
 11 occur in person or remotely. Any disputes between the Parties as to whether a deposition should  
 12 be taken in person or remotely may be submitted to the Court pursuant to the discovery dispute  
 13 resolution procedure outlined in Judge DeMarchi's Standing Order for Civil Cases. Nothing  
 14 herein shall prevent the parties from agreeing or the court from ordering a deposition to proceed  
 15 in person, or defending counsel from being physically present in the same room as the deponent  
 16 regardless of whether the deposition proceeds in person. Counsel may participate in any deposition  
 17 remotely. Where the witness, defending counsel, and/or deposing counsel appear for a deposition  
 18 remotely, the following remote deposition protocol shall apply.

19           b) **Vendor:** The noticing party may select remote court reporting, videoconference,  
 20 and remote deposition services vendors of their choosing. The protocols listed below shall govern  
 21 the taking of all remote depositions, regardless of the selected vendor, unless the Parties agree in  
 22 writing or on the record to a modification. The remote deposition services vendor shall utilize  
 23 technology that allows each participant to the deposition, including the witness, to control their  
 24 version of any electronic exhibit introduced at the deposition. Specifically, the witness, and each  
 25 participant, shall have the ability to scroll through the entire exhibit on his or her own, using the  
 26 controls on his or her computer. The questioning attorney may, however, utilize technology to  
 27 direct the witness and participants to particular parts of an exhibit. The remote deposition services

1 vendor shall use an exhibit-sharing platform capable of complying with the requirement of Section  
 2 7.1 of the Stipulated Protective Order that access to Protected Material be limited to persons  
 3 authorized under that Order (e.g., by password-protecting all Protected Material to be shared over  
 4 that platform, and ensuring that individuals who are not entitled to view material designated as  
 5 Confidential or Highly Confidential do not have access to such material).

6       c)     **Length of Deposition:** If audio or technical issues impact the ability to proceed  
 7 with the deposition, then the Parties will meet in good faith to continue the deposition.

8       d)     **Notice of Remote Deposition:** Any Party may notice a deposition to be taken  
 9 remotely pursuant to the terms of this protocol by so indicating in the notice of deposition.

10       e)     **Remote Administration of Oath and Video Recording:** The Parties agree and  
 11 the Court finds that a court reporter may administer the oath to a deponent remotely, even if the  
 12 court reporter is not in the physical presence of the witness. Further, if a court reporter is not  
 13 authorized to take oaths in the place of examination pursuant to Federal Rule of Civil Procedure  
 14 28, the Parties agree and the Court finds that extenuating circumstances warrant proceeding with  
 15 the administration of such oaths remotely and that the transcripts and video recordings may be  
 16 used by or against all Parties in this Litigation to the same extent that would otherwise be  
 17 permissible under applicable court orders, rules of court, rules of procedure and rules of evidence.  
 18 The Parties further stipulate and the Court finds, pursuant to Federal Rule of Civil Procedure 29(a),  
 19 that the recorded video provided in a digital file by the court reporting service or platform vendor  
 20 may be used as if it were a recording prepared by a certified videographer, and that each side will  
 21 waive any objections based on authenticity. The Parties will cooperate on technical issues  
 22 regarding the digital file (e.g., assuring audio and video quality, displaying exhibits, removing  
 23 segments that were off the record, and affixing time stamps).

24       f)     **Video-conferencing:** Where the witness, defending counsel, and/or the deposing  
 25 counsel are appearing for the deposition remotely, then a video conferencing service will be  
 26 utilized and such video may be recorded by a certified videographer for later use in proceedings  
 27 in this case, including trial. Such video may not be recorded except by a certified videographer

1 who has executed Exhibit A to the Stipulated Protective Order. The video-conferencing software  
2 must have sufficient security features in place to prevent disclosure of Protected Information to  
3 individuals who are not authorized to view such information under the Stipulated Protective Order.  
4 Details regarding the video conferencing to be used for each deposition will be made available to  
5 all Parties at least 3 (three) business days before the deposition. Deposing counsel and defending  
6 counsel shall meet, confer, and cooperate to ensure that the deponent has technology sufficient to  
7 attend a deposition via remote means. If necessary, this shall include arranging for the witness to  
8 participate in a “test run” of the deposition video conferencing software being utilized, at least 1  
9 (one) day before the scheduled date of the deposition. The Parties will discuss any further details  
10 related to the video conferencing service in advance of the deposition, and if there are any  
11 disagreements, will raise those with the Court. To the extent possible, the video conferencing  
12 service should display the witness, defending counsel, and deposing counsel on the video screen  
13 at all times, unless one or more counsel must be taken off screen to display an Exhibit; however,  
14 the witness should always be on screen. There should be no unrecorded or unnoted conversations  
15 between the witness and any counsel involved in this case (including the defending counsel) during  
16 a remote deposition while the witness is on the record and deposing counsel may ask the witness  
17 and his/her counsel to certify, on the record, that no such conversations have taken place.  
18 Furthermore, witnesses in depositions taken pursuant to this protocol shall not use or consult any  
19 means of communications while on the record during the deposition (other than audio and video  
20 communications used to conduct the deposition itself), including without limitation electronic  
21 communications (email, text, social media) and other communications (phone), and all counsel  
22 attending the deposition will also stipulate, on the record and at the beginning and end of each  
23 deposition, that they (and any individual working with them) will not communicate and have not  
24 communicated with the witness (respectively) while the witness is on the record other than in the  
25 presence of the court reporter and videographer. Nothing in this order prevents a witness from  
26 seeking advice regarding the application of a privilege or immunity from testifying during the  
27 course of a deposition taken pursuant to this order. All participants in the deposition shall have:  
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1 (1) a reliable internet connection capable of supporting video feeds; (2) a computer or personal  
2 tablet with a camera; (3) telephone and/or audio capabilities; and (4) access to a private, quiet  
3 room, where the confidentiality of the proceedings may be preserved for the entirety of the  
4 deposition. Before the deposition, counsel for the witness shall make reasonable efforts to ensure  
5 that the deponent has access to the necessary equipment and software to participate in the  
6 deposition remotely. If the deponent is a non-party witness, the noticing party shall be responsible  
7 for making reasonable efforts to ensure that the witness has access to all necessary equipment and  
8 software. All participants who connect to the audio/video platform must connect through a private,  
9 password-protected network. Connection through a public Wi-Fi network is not permitted. A  
10 copy of this protocol shall be sent to all non-party witnesses along with their subpoena for  
11 deposition.

12 g) **Deposition Recording:** In addition to recording the deposition by stenographic  
13 means, the deposing Party may record the deposition by video. The video recording shall be  
14 limited to the witness; however, this provision is separate from, and does not supplant, the  
15 individuals that should be displayed (rather than recorded for the official deposition video) during  
16 the deposition. Deposing counsel is responsible for ensuring that the remote means utilized for a  
17 deposition allow for the court reporter to accurately record the deponent's testimony. Either  
18 deposing or defending counsel may elect to have a technical specialist attend a deposition taken  
19 by remote means to ensure that technical issues are dealt with in a timely manner. Deposing  
20 counsel may also elect to have an exhibit specialist attend a deposition taken by remote means to  
21 ensure that exhibits are properly displayed during deposition. If deposing counsel utilizes an  
22 exhibit specialist, deposing counsel will act in good faith to make their exhibit specialist available  
23 to assist the defending counsel or other Parties to present any exhibits to the witness during cross-  
24 examination or redirect. For purposes of clarity, information designated under the Stipulated  
25 Protective Order may be disclosed to such technical or exhibit specialists during the course of a  
26 deposition without violating the Stipulated Protective Order, provided they have signed Exhibit A  
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1 to the Stipulated Protective Order. No person other than a videographer or the court reporter shall  
2 record any deposition by any video or audio means.

3       h)     **Technical Issues:** Should technical issues, such as audio or video issues, prevent  
4 the court reporter, witness, deposing counsel or defending counsel from reliably seeing one  
5 another, hearing one another, or, in the case of the court reporter, transcribing the testimony, at  
6 any point during a deposition taken pursuant to this order, the deposition shall be recessed until  
7 the technical issue is resolved. If such technical issue cannot be remedied in a timely manner,  
8 deposing counsel and defending counsel shall meet, confer, and cooperate with one another to  
9 address the problem, including but not limited to rescheduling the deposition. Any delays caused  
10 by technical issues shall not be counted toward time on the record, and the Parties will act in good  
11 faith to account for any such delays. This protocol shall not be interpreted to compel any Party to  
12 proceed with a deposition where the deponent cannot hear or understand the other participants or  
13 where the participants cannot hear or understand the deponent.

14       i)     **Individuals Present:** No person, other than the defending attorney, may be in the  
15 room with the witness while the witness is providing testimony on the record during a remote  
16 deposition. If the defending attorney is in the same room as the witness, the defending attorney  
17 shall be visible by video at all times while the witness is giving deposition testimony on the record.  
18 No person shall communicate with the witness via outside means, including, but not limited to,  
19 electronic communications (email, text, social media) and other communications (phone), while  
20 the witness is giving deposition testimony on the record, regardless of whether or not a question is  
21 then pending before the witness. This provision does not prohibit a witness from communicating  
22 with other persons during breaks, to the extent such communications are otherwise permitted by  
23 this protocol.

24       j)     **Objections:** If a technical issue prevents defending counsel from hearing a  
25 question and/or interposing a timely objection on the record, then defending counsel shall notify  
26 the deposition attendees as soon as possible (e.g., by using the chat features of the video conference  
27 or emailing counsel). Defending counsel's objection to that question is preserved if (i) the  
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1 objection is asserted promptly on the record after the technical issue is resolved, or (ii) if the  
2 technical issue cannot be resolved and the deposition is continued, the objection may be asserted  
3 in writing to deposing counsel and the court reporter within three business days of receiving the  
4 rough transcript that includes the question at issue. Any dispute about the validity of such an  
5 objection may be presented to the Court.

6       k)   **Electronic Exhibits:** Deposing counsel shall be responsible for ensuring that any  
7 exhibits that they wish to mark and use at the deposition can be shown to the witness and defending  
8 counsel in a manner that enables the witness and defending counsel to independently review the  
9 exhibits during the course of the deposition. Such means of marking and using exhibits for the  
10 deposition shall include (a) emailing pre-marked exhibits to the witness, defending counsel, and  
11 the court reporter in advance of the deposition; (b) using a video conferencing platform or other  
12 electronic application for presenting exhibits that enables deposing counsel to share exhibits with  
13 the witness, court reporter, and defending counsel; and (c) any other means that the deposing and  
14 defending counsel agree to. Deposing counsel shall provide electronic copies of exhibits  
15 introduced during the course of a deposition, either via email, deposition exhibit software, or via  
16 a pre-arranged FTP or file-sharing site, to ensure that opposing counsel may participate in the  
17 deposition. Deposing counsel shall not begin questioning a witness concerning an electronic  
18 exhibit until that exhibit has been received by defending counsel.

19       l)   **Deposition Exhibits:** At least seventy-two (72) hours before the remote  
20 deposition, the deposing party shall provide PDF files of the documents it intends to introduce in  
21 that deposition to a vendor agreed upon by the parties. The vendor shall not disclose these PDFs  
22 or any of their content to any party or entity except as described in this provision. Deposing  
23 counsel shall provide the vendor a numerical identifier for each PDF file. Prior to the deposition,  
24 the vendor shall provide one hard copy of each PDF file to the witness and one hard copy to non-  
25 deposing counsel; each hard copy shall be in its own sealed envelope which shall bear the  
26 numerical identifier for the enclosed document and no other information. Both non-deposing  
27 counsel and the witness may open exhibit-containing envelopes only on the record at the

1 deposition at the instruction of the deposing attorney. After the deposition, non-deposing counsel  
2 and the witness shall destroy any sealed envelopes that are not opened on the record during the  
3 deposition without opening the sealed envelopes. Such envelopes and their contents shall be  
4 destroyed using procedures applying to Confidential documents under the Stipulated Protective  
5 Order. The deposing party shall make best efforts to identify documents that it intends to introduce  
6 in deposition sufficiently in advance of the deposition to provide them to the vendor in accordance  
7 with this provision. This provision does not prohibit the deposing party from introducing  
8 additional exhibits during the deposition by providing electronic copies of exhibits introduced  
9 during the course of a deposition, either via email, deposition exhibit software, or via a pre-  
10 arranged FTP or file-sharing site. This provision also does not apply to exhibits that are not  
11 reasonably usable in hard-copy format, such as voluminous excel spreadsheets. With respect to  
12 any witness, including an expert witness, for whom the notice or subpoena calls for the witness to  
13 bring certain documents with him or her to the deposition, the requested documents and any  
14 objections to the requests shall be provided to the noticing counsel electronically (e.g., by email  
15 or secure file transfer) at least twenty-four hours in advance of the deposition. To the extent a  
16 witness reviews a document in the course of his or her testimony that was not marked as an exhibit  
17 in the deposition, the witness shall immediately make clear on the record that he or she is doing  
18 so, and the document shall be immediately provided to all Parties.

19           m) **Prohibited Devices:** Apart from the technology needed to participate in the remote  
20 deposition, the witness shall not use any technology, including, but not limited to, a computer,  
21 personal tablet, smartphone, or smartphone extension (such as a smartwatch), while giving  
22 deposition testimony on the record, except to the extent that technology is necessary for the witness  
23 to participate in the deposition. This provision does not prohibit the witness from using such  
24 technology to communicate with his or her counsel before the deposition, during breaks, or after  
25 the deposition, when the witness is not providing sworn testimony on the record, to the extent such  
26 communications are permitted.

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1                   n)    **Breaks:** Deposition breaks shall not be recorded and all videoconference and  
2 telephone lines shall be muted during deposition breaks.

3                   o)    **Privileged Information:** If privileged information is disclosed during the  
4 deposition due to a technical disruption or is inadvertently captured by a videoconferencing or  
5 other recording device, such disclosure shall not be deemed a waiver of privilege.

6                   p)    **Consent of Witnesses:** All party witnesses shall agree to abide by the terms of this  
7 protocol on the record at the beginning of the deposition.

8                   q)    **Miscellaneous**

9                   i.     The court reporter shall make Realtime feeds available to all counsel  
10                   participating in a deposition at either party's request. Absent a special need,  
11                   the witness will not have access to or use of the Realtime feed from the court  
12                   reporter at any time during the deposition.

13                   ii.    Witnesses shall not wear a mask when providing testimony on the record  
14                   during a remote deposition, regardless of whether others are physically  
15                   present.

16                   iii.    Witnesses will testify on the record that they do not have any notes or  
17                   documents available to them while the deposition is on the record, other  
18                   than any that are disclosed and provided to all Parties.

19                   iv.    All objections to the use and admissibility of the transcript or video of a  
20                   deposition taken pursuant to this order based solely on the fact that the  
21                   deposition was taken by remote means are deemed waived. The Parties  
22                   reserve all other objections to the use of any deposition testimony.

23                   v.     An objection on behalf of one plaintiff is deemed an objection on behalf of  
24                   all plaintiffs.

25                   **3. SCHEDULING OF DEPOSITIONS**

26                   Absent consent of the relevant Parties, which will not be unreasonably withheld, no  
27                   depositions may be scheduled on federal holidays, or days of religious observance, to the extent  
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1 the witness observes such day. The Parties shall make reasonable efforts to schedule depositions  
2 to begin at 9:00 a.m. (time zone of deponent during deposition) on Monday through Friday, unless  
3 otherwise agreed to by counsel.

4 **4. ATTENDANCE**

5 A deposition (whether in-person or remote) may only be attended by counsel of record in  
6 the case; members and employees of their firms; experts and consultants retained by their firms in  
7 connection with the case; attorneys specifically engaged by a Party in the case for purposes of the  
8 deposition; in-house counsel for a Party or a designated representative of that Party; court  
9 reporters; videographers; the deponent; a representative of a corporate/entity deponent (in the case  
10 of a 30(b)(6) deposition); and counsel for the deponent. While the deponent is being examined  
11 about any material designed as Confidential or Highly Confidential, persons to whom disclosure  
12 of such material is not authorized under the Stipulated Protective Order shall be excluded from the  
13 deposition. To the extent any provision in this Protocol conflicts with the Stipulated Protective  
14 Order, the terms of the Stipulated Protective Order shall control.

15 **5. USE OF DOCUMENTS FOR DEPOSITIONS**

16 The Parties will seek to agree upon a single court reporting service. To the extent that the  
17 Parties reach agreement on a single court reporting service, that service will maintain a Master  
18 Exhibit List which will be circulated by e-mail periodically to all Parties. Unless otherwise agreed  
19 upon by the Parties, the noticing Party must work with the court reporting service to update the  
20 Master Exhibit List so that every exhibit marked at a deposition is listed thereon within three  
21 business days of the day it was first marked. The index of exhibits annexed to each deposition  
22 transcript shall contain the document-production (Bates) number, the number for each exhibit  
23 marked for identification at the deposition, and each exhibit referred to in the deposition. The  
24 court reporting service shall be responsible for ensuring that all exhibits marked at depositions are  
25 accessible on a File Transfer Protocol site to all counsel in the case within twenty-four hours of  
26 being marked as deposition exhibits, and that only those individuals authorized to view documents  
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1 marked as "Confidential," or "Highly Confidential" under the Stipulated Protective Order have  
2 access to such documents.

3 Exhibit numbers will be assigned by the attorney taking the deposition and/or the court  
4 reporter service sequentially regardless of what Party marks the exhibit, and numbering of exhibits  
5 at each successive deposition will resume where the numbering at the preceding deposition ended.  
6 The attorney taking the deposition and/or the court reporting service will use 100 exhibit gaps  
7 when depositions are occurring on the same day. Counsel will make their best efforts to use the  
8 previously marked exhibit number in subsequent depositions.

9 If the pages of an exhibit are not numbered internally, the court reporting service shall be  
10 responsible for appending page number designations preceded by the exhibit number (e.g., Exhibit  
11 100-2, 100-3, 100-4), consistent with N.D. Cal. Local Rule 30-2(b)(2).

12 **6. CONFIDENTIALITY**

13 The use of documents at deposition and testimony taken at all depositions shall be governed  
14 by the Stipulated Protective Order.

15 **7. RESERVATION OF RIGHTS**

16 Agreement to this Protocol does not constitute in any way an agreement or concession that  
17 a Party is entitled to the discovery requested, that any particular notice, cross-notice, or subpoena  
18 of a deposition is proper, or that any particular deposition is appropriate and relevant to the subject  
19 matter of the case, and does not constitute a waiver of any objections regarding such notices, the  
20 admissibility of evidence, or any defense except as set forth above. Furthermore, the admissibility  
21 of any deposition testimony at trial remains subject to all applicable laws and court rules, and the  
22 Parties expressly reserve all objections on all grounds regarding the admissibility of such testimony  
23 except as set forth above.

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1       8. **MODIFICATION**

2       This Order may be modified by the Parties on their own motion or the Court on its own  
3       motion for good cause shown.

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5       PURSUANT TO STIPULATION, IT IS SO ORDERED.

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7       DATED: October 29, 2021

*Virginia K. DeMarchi*  
Hon. Virginia K. DeMarchi  
United States Magistrate Judge